REMARKS/ARGUMENTS

Examination of this application has been continued under 37 CFR 1.114, primarily in order to overcome or remove U.S. 6,539,303 ("303 patent"), whereupon the examiner has indicated that the claims appear to overcome the prior art of record. (See Interview Summary, May 11, 2006).

Pursuant to the telephone interview on April 19, 2007, and in response to the outstanding Office action, applicants submit herewith a revised declaration under Rule 1.132, which is believed to overcome the 303 patent based on an unequivocal declaration from the common inventor (John McClure) that he is the inventor of the subject matter disclosed in the 303 patent relied on in the rejection.

Pursuant to the examiner's requirement, the McClure declaration has been revised to include a statement (paragraph 5) pointing out that he is the inventor of the subject matter relied on in the rejection as disclosed in the other parts of the 303 patent, i.e. the drawings, claims and parts of the detailed description, in addition to the passages from the claims specifically identified in paragraph 4. Also pursuant to the examiner's requirement, the revised declaration includes a statement (paragraph 6) that Mr. McClure is the inventor of all of the subject matter of the 303 patent cited and applied in the April 7, 2006 Office action.

The unequivocal statement by Mr. McClure that he invented the subject matter of the 303 patent relied on in the April 7, 2006 Office action rejection removes the reference as prior art under 35 U.S.C. 102 (a), (e), (f) and (g), and consequently under 35 U.S.C. 103. MPEP § 715.01(a) provides an example of an inventor (S) and another filing an earlier application, which would be a valid reference against his or her later application under 102(a) or (e) ***unless*** overcome by an unequivocal declaration under rule 1.132 that he or she (inventor S) invented the subject matter disclosed in the earlier application and relied on in the rejection. *In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982).

The MPEP also states:

> Alternatively, the applicant(s) may overcome the rejection [previously known or used under 102(a)] by filing a specific affidavit or declaration under 37 CFR 1.132 showing that the activity was performed by the applicant(s). MPEP § 715.01(d)

The use of 37 CFR 1.132 declarations to remove references is further discussed at MPEP § 716.10. Example 2 in that section describes inventor S and another filing an earlier application and a different entity (with S as the common inventor) filing a later application. In this situation a Rule 1.132 declaration can remove a publication or patent based on the earlier application, which would otherwise be available as prior art under 35 U.S.C. 102(a) or (e) because of the different inventor entities.

The revised McClure declaration submitted herewith unequivocally states that he is the inventor of the subject matter disclosed in the drawings, detailed description and claims of the 303 patent, which was relied on in rejecting the claims in the present application in the April 7, 2006 Office action. Based on the foregoing the 303 patent has been overcome. The claims of the present application are therefore patentable over the prior art of record.

The examiner is invited to contact the undersigned by telephone if prosecution of this application can be expedited thereby.

Substance of the April 19, 2007 Interview

1. No exhibits were shown or demonstrations conducted.

2. No claims were discussed.

3. Removal of McClure U.S. 6,539,303 was discussed.

4. The principle proposed amendments of a substantive nature related to removing the McClure reference. The applicants' representative and the examiner also discussed canceling dependent claims 13, 15 and 16 in order to overcome their rejection under 35 U.S.C. 112.

5. The general thrust of the principal arguments was that an unequivocal declaration under 37 CFR 1.132, with revisions suggested by the examiner, would remove the 303 patent. The claims would thereby distinguish over the prior art of record. Overcoming the 35 U.S.C. 112 rejections by canceling dependent claims 13, 15 and 16 was also discussed.

6. No other pertinent matters were discussed.

7. The general results or outcome of the interview were that the revised declaration would remove the McClure reference whereby the claims would distinguish over the prior art of record, and that canceling claims 13, 15 and 16 would remove the Section 112 rejections.

I hereby certify that this paper is being filed by facsimile transmission (571-273-8300) with the U.S. Patent and Trademark Office.
Date of transmission: May 31, 2007
Mark Brown

Respectfully Submitted,

Mark Brown

MARK E. BROWN
Patent Office Reg. No. 30,361

LAW OFFICE OF MARK BROWN, LLC
4700 Belleview Suite 210
Kansas City, MO 64112
Telephone: (816) 268-8950

Attorney for Applicant